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Submission to the Independent Review of Australian Public Service

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Thank you for the opportunity to provide a submission to this review.

My submission will focus on recommendations on enabling the APS to deliver high quality policy advice and regulatory oversight.

Delivering high quality Policy Advice and regulatory oversight

1. reforms To policy advisory Systems

The policy advisory systems surrounding Ministers has undergone remarkable change in the last 30 years, with the 24-hour media cycle, the increase in power and influence of ministerial advisers, as well as the proliferation of lobby groups seeking to influence government. The APS no longer has the monopoly on policy advice. The insertion of these new groups into the policy advisory system has disrupted the traditional bilateral relationship between the APS and their Ministers. It is my opinion that the interaction with the APS and ministerial advisers and lobby groups could be better regulated through:

* External enforcement of guidelines for the interaction between APS staff and ministerial advisers; and
* Legislative regulation of the interaction between APS staff and lobby groups.

(a) External enforcement of Guidelines for interaction between Aps staff and ministerial advisers

APS staff have complained that ministerial advisers have interfered with bureaucratic advice and decision-making.[[1]](#footnote-1) The actions of ministerial advisers exceeding their boundaries has resulted in a number of scandals and controversies over the years that have been the headline news.[[2]](#footnote-2)

The existing federal Statement of Standards for Ministerial Staff is inadequate, as sanctions under the Standards are handled internally by the core executive through the Prime Minister’s Office. This means that any breaches of the Standards by ministerial advisers would be handled behind closed doors, without the scrutiny of Parliament or any external bodies. This is contrary to international best practice, as codes of conduct for ministerial staff in the United Kingdom, Canada, and New Zealand are enforced by independent commissioners.[[3]](#footnote-3)

In addition, the guidelines should be supplemented with training for ministerial advisers that provides them with guidance and advice on how to deal with the public service.

(B) LEGISLATIVE REGULATION OF THE INTERACTION BETWEEN APS STAFF AND LOBBY GROUPS

Although lobbying is integral to democratic representation, there are concerns regarding the secrecy and unfair influence of professional lobbyists, which may ultimately lead to corrupt conduct by lobbyists and/or officials. As the OECD has observed, ‘(l)obbying is often perceived negatively, as giving special advantages to “vocal vested interests” and with negotiations carried on behind closed doors, overriding the “wishes of the whole community” in public decision-making’.[[4]](#footnote-4) The primary risks of lobbying to democracies include secrecy, unfair access and influence and corruption.[[5]](#footnote-5)

As such, there should also be legislative regulation of the interaction between APS staff and lobby groups. Although Australia was one of the world pioneers in regulating lobbying activity, lobbying regulation at the federal level is now lagging behind the States, with NSW, Queensland, and Western Australia adopting legislative regulation.[[6]](#footnote-6) Ideally there should be an independent regulator policing the system, akin to the Canadian Conflict of Interest and Ethics Commissioner.

1. reforms to regulatory oversight

Regulatory oversight of government activities is essential in a robust democracy to ensure that governmental action remains within legal boundaries. I would suggest two main recommendations to reform the regulatory oversight of government:

* Strengthening the legislative framework of integrity bodies; and
* Introducing a federal anti-corruption body.

(a) Strengthening the legislative framework of integrity bodies

One way in which the demand for accountable government might be met is through integrity bodies, whose number and powers have grown rapidly in recent years. To enable them to perform their watchdog function more effectively, the integrity bodies should be granted a level of independence from the executive through a closer link to Parliament.

There should be a more coherent legislative framework for Commonwealth integrity bodies, including the Ombudsman, Auditor-General and Information Commissioner. In Canada and New Zealand, there is a well-articulated concept of the officer or agent of Parliament, where integrity bodies have a link to Parliament in term of appointments, budget-setting, and scrutiny.[[7]](#footnote-7)

All integrity bodies should be provided with independence from executive interference, including institutional protections such as having statutory protections in terms of tenure and removal, as well as operational freedom such as the power to conduct ‘own motion’ investigations, and having a statutorily-protected budget to fulfil their mandate or budget approval processes through a parliamentary committee.

There have been instances where integrity agencies have been deprived of funding to the extent that their ability to perform their functions have been impeded,[[8]](#footnote-8) the most ignominious example being the Australian federal Information Commissioner being defunded in 2015 to the extent that he had to shut his office and work from home[[9]](#footnote-9) while the supporting Freedom of Information Commissioner position was left vacant.[[10]](#footnote-10)

(B) Introducing a federal anti-corruption body

To uncover and investigate allegations of corruption, a federal anti-corruption body modelled on NSW’s Independent Commission Against Corruption should be introduced. In this way, there will be more complete regulatory oversight over the APS. All States have anti-corruption bodies, and the federal government is lagging behind in this crucial area.

Final Remarks

It is commendable that the government is considering holistic reform to the Australian Public Service.

I am happy to provide further details or evidence on any of the points made.

**Expertise:**

The author is a Senior Lecturer at Monash University Faculty of Law. I am the author of *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) and *Ministerial Advisers in Australia: The Modern Legal Context* (Federation Press, 2016), which was a finalist of the inaugural Holt Prize. I have worked as a Policy Advisor at the Department of the Prime Minister and Cabinet, a Senior Legal Advisor at the Victorian Department of Premier and Cabinet, as well as a Manager at the Victorian Department of Justice. I research in the area of law and politics, focusing on issues of political integrity and the law.I regularly comment in [The Conversation](https://theconversation.com/profiles/yee-fui-ng-227133) on issues relating to public law and politics, including reforming the Australian policy advisory system.

1. Yee-Fui Ng, *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) ch 3. [↑](#footnote-ref-1)
2. Yee-Fui Ng, *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) ch 4, Yee-Fui Ng, *Ministerial Advisers in Australia: The Modern Legal Context* (Federation Press, 2016). [↑](#footnote-ref-2)
3. Yee-Fui Ng, *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) ch 5. [↑](#footnote-ref-3)
4. OECD, above n 8, 9. [↑](#footnote-ref-4)
5. Joo-Cheong Tham, *Money and Politics: The Democracy We Can’t Afford* (2010) ch 9. [↑](#footnote-ref-5)
6. *Lobbying of Government Officials Act 2001* (NSW); *Integrity Act 2009* (Qld); Integrity (Lobbyists) Act 2016 (WA); *Lobbyists Act 2015* (SA). [↑](#footnote-ref-6)
7. Paul G Thomas, 'The Past, Present and Future of the Officers of Parliament' (2003) 46(3) *Canadian Public Administration* 287, 288. [↑](#footnote-ref-7)
8. Gay 24-25, 30. [↑](#footnote-ref-8)
9. <http://www.canberratimes.com.au/national/public-service/the-slow-death-of-the-office-of-the-australian-information-commissioner-20150826-gj81dl.html>. [↑](#footnote-ref-9)
10. < http://www.news.com.au/national/breaking-news/govt-to-leave-foi-commissioner-role-vacant/news-story/48f0b632f8b6565d4aad1e862057a03e>. [↑](#footnote-ref-10)